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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
Federal-State Joint Board on ) CC Docket No. 96-45  
Universal Service )

TO: The Commission

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REPLY COMMENTS OF  
LUFKIN-CONROE TELEPHONE EXCHANGE, INC.

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Summary

Lufkin-Conroe Telephone Exchange, Inc. (LCTX) submits reply comments regarding the Federal-State Joint Board's recommendations for modification of universal service support mechanisms.

Whereas LCTX supports competition in the telecommunications industry, this goal must be balanced against the equally important goal of preserving and enhancing universal service. The Commission must not promote artificial "competition" by riding roughshod over the rights of the small, rural telephone companies who have long been the only entities willing to serve many remote, high-cost areas.

LCTX requests that any modified universal service support system continue to be calculated and distributed on the basis of the verifiable, actual costs of carriers. The present mechanism has been tested over the past decade, and found to furnish reliable and equitable support enabling carriers to meet the actual dollar costs of serving high-cost areas. The proven current system should not be cavalierly tossed aside in favor of a hypothetical, untested, and presently nonexistent proxy model. Rather, because it is based upon actual costs, the current mechanism can be readily modified to encompass existing implicit as well as explicit support flows, while ensuring that all carriers recover their actual past and future investments and expenditures to serve high-cost areas.

LCTX also believes that the statutory universal service principles -- as well as administrative efficiency, privacy and rural economic development principles -- require the continued

support of second residential connections, second residences, single-connection businesses and multiple-connection businesses during the short and long term.

Finally, LCTX believes that universal service support should not be provided to pure resellers and other non-facilities-based carriers, and that recipients must construct, operate and maintain substantial physical facilities of their own.

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TO: The Commission

Lufkin-Conroe Telephone Exchange, Inc. (LCTX) submits its reply comments regarding the Federal-State Joint Board's Recommended Decision, FCC 96J-3, released November 8, 1996, in the referenced docket, and the Public Notice (Common Carrier Bureau Seeks Comment On Universal Service Recommended Decision), DA 96-1891, released November 18, 1996.

As a prefatory note, LCTX supports competition in the telecommunications and information services industries. However, the Commission must develop a regulatory paradigm that is equitable to incumbents and potential entrants alike, and that does not attempt to create artificial "competition" in areas or markets where it is not yet warranted by market forces. Neither "competition" nor "competitive neutrality" require or permit the Commission to favor new entrants over incumbent local exchange carriers (ILECs) -- for example, by refusing to allow ILECs to recover the actual costs of the investments they were required to make under the existing regulatory compact, by declining to support critical services required to be furnished by ILECs solely because they are not yet offered by certain potential new entrants, or by providing support

to new entrants at levels far in excess of their costs. If and when competition is warranted by market forces in particular rural areas, AT&T, MCI and other large corporations do not need a Commission thumb on their side of the scale in order to compete with the small telephone companies that long have been the only entities willing to serve those areas.

LCTX herein: (a) supports the comments of the Rural Telephone Coalition (RTC) and the United States Telephone Association (USTA) that any modified federal universal service system must allow carriers to recover their costs of serving rural and other high-cost areas; (b) opposes the comments of Teleport Communications Group (Teleport), Association of Local Telecommunications Services (ALTS) and others that single-connection businesses should be denied universal service support, and agrees with the Western Alliance (Alliance), John Staurulakis (JSI) and others that second residential connections, second residences and multiple-connection businesses should be included in the revised universal service support system; and (c) opposes the comments of the Telecommunications Resellers Association (TRA) that universal service support should be provided to resellers and other non-facilities-based carriers, and emphasizes that eligibility rules should require recipients to construct and operate substantial facilities of their own.

#### **Background**

LCTX is a local exchange carrier that operates sixteen tele-

phone exchanges in eastern Texas -- nine in the Lufkin area (approximately 120 miles northeast of Houston) and seven in the Conroe area (approximately 35 miles north of Houston). LCTX serves approximately 83,460 access lines overall, and operates exchanges serving the rural Texas communities of Alto (approximately 1,552 access lines), Apple Springs (approximately 741 access lines), Central (approximately 1,300 access lines), Cut & Shoot (approximately 650 access lines), Etoile (approximately 738 access lines), Fuller Springs (approximately 1,136 access lines), Grangerland (approximately 1,973 access lines), Hudson (approximately 2,214 access lines), Montgomery (approximately 3,142 access lines), Walden (approximately 2,652 access lines), and Wells (approximately 862 access lines).

**Universal Service Support Must Enable  
Carriers To Recover Government-Imposed Investment And Costs**

LCTX agrees with USTA that the "regulatory contract" which has long required ILECs to make uneconomical capital investments and to serve remote or unprofitable customers, in turn, requires federal and state regulators to allow ILECs to recover the actual costs of those investments (USTA Comments, at 3). LCTX further agrees with RTC that the various hypothetical, incomplete and untested proxy models before the Commission violate the "taking" clause of the Fifth Amendment, by making it impossible for many small telephone companies to recover their costs and earn a return on their investment (RTC Comments, at 2).

Like most small telephone companies, LCTX serves areas which

the old Bell System and other large carriers deemed unprofitable or otherwise unattractive at the time the U.S. telephone network was being constructed. It began serving all of its exchanges -- including the Lufkin exchange (in 1898) and the Conroe exchange (in 1929) exchanges -- at times when they were outlying rural areas. More recently, in 1990, LCTX sought and obtained authorization to expand its Apple Springs exchange to encompass outlying rural areas that were unwanted and unserved by Southwestern Bell. Hence, like most rural telephone companies, LCTX has not employed "universal service" or other regulatory devices to drive off or keep out real and potential competitors. Rather, it has agreed to construct and operate exchange facilities to serve rural areas which otherwise would have been denied adequate telephone service for lengthy periods.

Moreover, once LCTX agreed to serve its rural exchange areas, it was required to serve virtually every household and business therein, regardless of the additional investment and expenses. For example, in 1995, LCTX installed approximately nine miles of cable across a lake and surrounding woodland area in order to satisfy a request for service from eight families residing in a community within a national forest. In other words, LCTX has not been able to operate its business as a wholly rational economic entity. Rather, it has been required by federal and state agencies to make investments that would not have been made by an unregulated business, and to serve customers that would not have been served by an unregulated business. As a quid pro quo for complying with



these obligations, LCTX has been permitted to recover a critical portion of its costs via the existing Universal Service Fund (USF) and Long Term Support (LTS) mechanisms.

The Joint Board's proposals to "freeze" existing universal service support during a 3-to-6 year transition period for rural LECs and to shift ultimately to a presently nonexistent, proxy-based support system abrogate this compact in a precipitous and unreasonable manner, to the detriment of LCTX and its customers. LCTX will not be able to recover its prior, non-depreciated investment in local loop plant during the brief transition period, and has no present ability to estimate the revenue reductions and fluctuations and reductions that are likely to result from the still-indeterminate proxy model and benchmark.

The local exchange industry has long been required by state and federal regulators to depreciate facilities over very lengthy periods, and consequently has long been forced to operate with inadequate depreciation reserves. These conservative depreciation prescriptions have plagued the industry for years, but are becoming particularly critical at this time because the Joint Board proposal, if adopted, will be implemented during a period too short to allow recovery of substantial prior investments.

It has been established that failure to allow sufficient compensation for public utility property constitutes a "taking" without just compensation in violation of the Fifth and Fourteenth Amendments. Duquesne Light Co. v. Barasch, 488 U.S. 299, 308 (1989). In reviewing compensation, courts look to whether carriers

can reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed, while providing appropriate protection to the relevant existing and foreseeable public interests. Jersey Central Power & Light Co. v. FERC, 810 F.2d 1168, 1189-1192 (D.C. Cir. 1987).

The proposed proxy system offers no hope or assurance that adequate compensation will ever be received for investment remaining unrecovered at the end of the inadequate 3-to-6 year transition period. Its defects include: (a) the lack of any specific, tested and generally accepted proxy model at this time; (b) the absence of any evidence that one or several future proxy models can accurately depict and analyze the cost characteristics of the widely differing networks of the thousands of large, mid-sized and small carriers providing local exchange service presently and during the foreseeable future; and (c) the significant potential differences between the hypothetical, "forward-looking," long-run costs estimated by proxy models and the actual dollar operating expenses, debt service and dividends that must be paid by carriers in the real world.

These defects will produce distortions and uncertainties that dwarf the alleged shortcomings of the existing USF/LTS system. LCTX believes that regulators, investors, and lenders (both private and government) have permitted precious little "gold-plating" by current USF recipients. Small LECs, in particular, seldom have sufficient resources to take advantage of all the projects and

opportunities available to them, much less to waste resources on unnecessary facilities. In those rare instances where waste or inefficiency are suspected, federal or state regulators can employ the traditional "used and useful" test to disallow unnecessary investment or expenses, and thereby reduce universal service support to appropriate and sufficient levels. The time and effort devoted by regulators to periodic "used and useful" analyses is likely to constitute but a small fraction of the time and effort they will need to expend to try to develop and test a satisfactory proxy model (if such is possible at all), and to modify and re-test the model as technology and other conditions change.

The Commission should not throw out the baby with her bath water. The existing mechanisms based upon verifiable, actual costs have equitably and reasonably distributed universal service support during the past decade, and can be readily modified to encompass implicit support. In contrast, the only "certain" results of the replacement of these proven mechanisms by a hypothetical and untested proxy system is that there will be major changes in the universal service support received by many carriers. Because proxy-based support will be divorced from actual costs, the new proxy "game" will be create "winners" and "losers" among carriers serving high-cost areas, and will no longer distribute support in a nondiscriminatory manner on the basis of actual and verifiable above-average costs.

The proxy models currently under consideration are based on the costs and configurations of large LECs serving predominately

urban areas (Recommended Decision, para. 273). As a result, the vast majority of "losers" will be small carriers having significantly different cost structures. The Joint Board has recognized that these are the very carriers most vulnerable to support reductions, because they lack substantial customer and resource bases, as well as economies of scale and scope (Recommended Decision, para. 283). For most small LECs, significant reductions in proxy-based support mean either increases in local service rates to less affordable levels (assuming that state commissions allow such increases), or deterioration of present and/or future service quality.

Moreover, the Joint Board's proposed transition period and proxy mechanism could not be more inimical to the future upgrade and development of the telecommunications infrastructure in rural areas. Rather than encouraging rural carriers to operate "efficiently" during the transition period because no additional support will be provided for increased costs (Recommended Decision, para. 290), the Joint Board's frozen support proposal will ensure that rural LECs do not invest in needed new or upgraded facilities for which costs cannot be recovered. Likewise, under the proposed proxy system, carriers will not go through the two-or-three year process of investing in major new or upgraded infrastructure (including engineering, loan application and approval, equipment selection and acquisition, and construction), if their basis for universal service support can be cut drastically a year or two later by a Commission decision that a different technology has

later become the "least-cost, most efficient and reasonable technology."

In conclusion, the Commission is urged to keep in mind the express statutory requirements that universal service support mechanisms remain sufficient [47 U.S.C. §§ 254(b)(5) and 254(e)] to ensure the availability of quality services at reasonable and affordable rates [47 U.S.C. § 254(b)(1)] and access by rural customers to services reasonably comparable to those provided in urban areas at reasonably comparable rates [47 U.S.C. § 254(b)(3)]. The most fair, effective and efficient way to accomplish these goals is to continue to employ a system based upon actual and verifiable costs, and to reject the proposed undeveloped and untried proxy models.

**Universal Service Support Should Include  
All Lines And Customers In High-Cost Areas**

LCTX opposes the recommendation of the Joint Board for exclusion of second residential lines, second residences, and multiple-line businesses from eligibility for universal service support (Recommended Decision, paras. 89-91), as well as the proposals of Teleport, ALTS and others that single-line businesses be excluded as well. LCTX believes that the "reasonably comparable rural/urban services and rates [47 U.S.C. § 254(b)(3)], "access to advanced services" [47 U.S.C. § 254(b)(2)], and "sufficiency" [47 U.S.C. §§ 254(b)(5) and 254(e)] principles require that these services continue to be supported. Moreover, reductions in support from exclusion of these lines will result in rate increases or

service quality reductions that violate the statutory principle of "quality services at reasonable and affordable rates" [47 U.S.C. § 254(b)(1)]. Finally, the consequences of the proposed exclusions include administrative nightmares, invasions of customer privacy, and disruption of long-term rural economic development efforts.

Second residential lines are a rapidly growing aspect of LCTX's business and that of other urban and rural carriers. Given the burgeoning interest in facsimile communications, Internet access, interactive games and other information services that tie-up lines for extended periods, second lines are already essential for many households to maintain effective access to the network (among other things, for educational and safety reasons), and will increasingly affect lifestyles and communication patterns. However, whereas second residential lines are generally available in urban and suburban areas at the same or lower rates as initial residential lines, significant rate differentials will arise in high-cost rural areas if second lines are denied universal service support. This will deny rural residents access to services and rates reasonably comparable to those of their urban counterparts, and will place such rural residents at a serious disadvantage regarding their access to advanced telecommunications and information services.

Reasonable and affordable service to second homes is also essential to public safety and public health. Many of these structures are located in forests or on lakes, and may be the critical first point of contact for summoning assistance in the

event of fires, accidents, illness and other emergencies. Because second homes are normally occupied only part of the year, their owners may well opt to forego telephone service if universal service support is denied and monthly service rates increase significantly. In the event of an emergency, this absence of telephone service will delay access to emergency assistance, and may result in loss of life and/or avoidable damage to public or personal property.

In the case of both second residential lines and second residences (and also single-line businesses), determination of the proper service classification will create an impossible and expensive administrative nightmare for carriers. LCTX and other carriers have never previously collected and maintained billing records that would permit them to make accurate, reliable and equitable determinations. To collect and verify this information now from existing customers would be an expensive and time-consuming undertaking, and would be resisted by many as an invasion of their privacy. Even if the information could be collected, LCTX would not know how to resolve the following and similar questions:

- a. If separate telephone lines have been purchased at the same address by a man and a woman with different last names, what criteria should be used to determine whether the lines should be classified as "two single residential connections" or as "a first and second residential connection"?
- b. If a separate telephone line is purchased at a residential address by an unmarried child or elderly grandparent, what criteria (e.g., age, status as a dependent on the family's tax return, nature and location of living quarters) should be used to determine whether the line is a separate "single residential connection" or "a second residential connection"?

- c. How does LCTX tell whether an individual who does not appear to use his or her telephone for weeks or months at a time is maintaining a second residence elsewhere, is travelling a lot, or just does not use the telephone very much?
- d. How does LCTX determine the "primary" versus "second" residence of a retired couple that spends six months of each year in Conroe, and six months in Colorado?
- e. If single-line businesses are excluded or provided reduced support, how does LCTX classify the telephone of an individual who appears to be operating a business out of his or her home?

If LCTX and other carriers are forced to become "residence police" investigating and classifying their customers, they are going to incur substantial additional administrative and legal expenses, and are going to inconvenience and antagonize many customers. The Commission is asked to treat LECs and other carriers in the same manner as the Joint Board proposed to treat schools and libraries (Recommended Decision, para. 567). That is, the Commission should be equally reluctant to place "unduly burdensome reporting and accounting requirements" on carriers regarding their investigation and classification of access lines for universal service purposes. Given the essential functions provided by second residential lines and second residence services, the Commission should promote its universal service goals, as well as eliminate administrative burdens and gaming, by including all residential lines in its revised universal service support mechanism.

Inclusion of multiple-connection (as well as single-connection) businesses in this mechanism is essential for rural economic development. During the past decade, state and county economic development agencies have worked to bring thousands of



essential new jobs to rural areas by attracting telemarketing, customer support, mail order fulfillment, data entry and similar telecommunications-intensive businesses.

Contrary to the Joint Board's apparent assumption, most multiple-connection businesses are small businesses rather than large corporations (Recommended Decision, para. 91). And whereas the cost of telephone service may or may not be a factor that might cause a multiple-connection business not to subscribe to telephone service (Id.), it certainly is a factor directly influencing whether a telemarketing firm or other communications-intensive business will locate or remain in a rural community. If adopted, the Joint Board's proposed exclusion of support for multiple-connection business service will destroy years of economic development efforts by states, counties and rural telephone companies, and send a message to information and service firms that they cannot receive comparable telecommunications services at comparable rates in rural America. Therefore, the proposal should be rejected, and the existing support continued.

Finally, LCTX notes that the Joint Board's proposed exclusion of support for second residential connections, second residences, and multiple-connection businesses (and the Teleport-ALTS proposed exclusion of support for single-connection businesses) appears to reduce the "frozen" support provided to rural telephone companies by approximately 18 to 25 percent during the proposed transition period. Specifically, it appears that the Joint Board contemplates that the frozen per-line USF/DEM/LTS factors used during the

transition period will be calculated on the basis of the total number of loops (including second residential connections, second residences and multiple-connection businesses) at the end of 1995 or 1996 (Recommended Decision, paras. 291-93). Given that the excluded loops constitute about 18-to-25 percent of total loops nationwide, this translates to a USF/DEM/LTS reduction of similar magnitude when these frozen per-line factors are multiplied only by the 75-to-82 percent of loops (i.e., principal residential lines and single-connection business lines) proposed to remain eligible for support, in order to determine the dollar amount of "frozen" USF/DEM/LTS support going to individual rural telephone companies during the transition period. This sharp and unexpected reduction contravenes the express "sufficiency" principle of Sections 254(b)(5) and 254(e), as well as the Joint Board's stated transition goals. It should be eliminated by extending universal service support to all lines in high-cost areas, including second residential connections, second residences, single-connection businesses and multiple-connection businesses

**Universal Service Support Should Be Furnished Only To  
Carriers Constructing And Operating Substantial Facilities**

LCTX vigorously opposes TRA's proposal that universal service support be furnished to pure resellers having no local facilities of their own (TRA Comments, pp. 10-16), as well as the proposals of the Competitive Telecommunications Association (CompTel) and others that the "own facilities" requirement of Section 214(e)(1) be permitted to be satisfied by the lease of a single unbundled

network element.

New Section 214(e)(1) requires "eligible telecommunications carriers (ETCs)" to offer services "using [their] own facilities or a combination of [their] own facilities and resale of another carrier's services." Particularly when considered in conjunction with the designation and relinquishment provisions of Section 214(e)(3) and (4), the primary intent of this provision is to ensure the construction and maintenance of adequate physical facilities to serve each area.

TRA's proposal for expansion of eligibility for universal service support to pure resellers contravenes both the explicit terms and intent of Section 214(e)(1). By definition, pure resellers have not constructed (and do not maintain or upgrade) any of their own facilities. Payment of support to them would simply increase their profit, and would do nothing to improve the quality of service, increase access to advanced services, or enhance the comparability of rural services. The only effective and reliable way to ensure that adequate facilities will be constructed and maintained in high-cost areas is to provide sufficient and predictable support to those carriers willing to furnish, operate and maintain their own facilities.

Moreover, eligibility to receive such support should be limited to those willing to furnish substantial facilities. Predominant resellers should not be permitted to "game" Section 214(e)(1) by leasing access to a single (or even several) unbundled network elements from a facilities-based carrier. As with resold

facilities or services, the underlying carrier is the only one constructing, maintaining, and upgrading the actual physical facilities comprising the unbundled network element. Therefore, if adequate physical facilities are to remain available at an appropriate quality level, the carrier operating, maintaining and upgrading such facilities should receive any and all universal service support applicable to them.

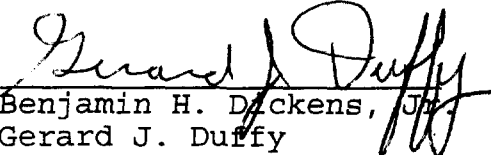
Finally, hybrid facilities-based/resale carriers should be required to construct and maintain their own loop facilities serving a substantial portion of their customers (at least 20 percent) before they become eligible for ETC status.

### **Conclusion**

In implementing the 1996 Act, the Commission must balance its goal of nurturing competition against its equally important goal of protecting and evolving universal service in rural and other high-cost areas, and must do so in a manner that is equitable to incumbent LECs as well as new entrants. LCTX requests that any modified universal service support mechanism continue to be calculated and distributed on the basis of the verifiable, actual costs of carriers, and that the proven current system not be precipitously junked in favor of a hypothetical and untested proxy model. Only a system based upon actual costs ensures that carriers will receive support that is equitable and consistent with their actual dollar expenditures to serve high-cost areas, and that they will be able to recover the costs imposed upon them by federal and

state agencies under the existing regulatory compact. LCTX also believes that the 1996 Act's universal service principles require the continued support of second residential connections, second residences, single-connection businesses and multiple-connection businesses during both the short term and the long term. Finally, LCTX believes that universal service support should not be provided to resellers and other non-facilities-based carriers, and that all eligible recipients must have constructed and be operating substantial physical facilities of their own.

Respectfully submitted,  
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## CERTIFICATE OF SERVICE

I, Cheryl R. Pannell, hereby certify that I am an employee of Blooston, Mordkofsky, Jackson & Dickens, and that on this 10th day of January, 1997, I caused to be delivered by hand or by U. S. Mail, a copy of the foregoing **"REPLY COMMENTS OF LUFKIN-CONROE TELEPHONE EXCHANGE, INC."** to the following:

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